

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #19-382**

REFERENCES TO THE CODE OF FEDERAL REGULATIONS (CFR)**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for [326 IAC 1-1-3](#) updates to references to the Code of Federal Regulations (CFR) to bring it up to date with the July 1, 2018, edition and to update references in [326 IAC 12-1-1](#). IDEM is soliciting written comment on the draft rule language and will schedule a public hearing before the Environmental Rules Board (board) for consideration of adoption of these rules.

CITATIONS AFFECTED: [326 IAC 1-1-3](#); [326 IAC 12-1-1](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-17-3](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-8](#) recognizes that, under certain circumstances, it may be appropriate to reduce the number of public comment periods and public hearings usually provided for under the [IC 13-14-9](#) environmental rulemaking process. In cases where the commissioner determines that there is no reasonably anticipated benefit from a second public comment period and first public hearing to either the environment or persons regulated or otherwise affected by the draft rule, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for adoption. Two opportunities for public comment (with this notice and at the public hearing prior to adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by [IC 13-14-9-8](#), the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for adoption and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-8](#).

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) an amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in [IC 13-14-9-7\(a\)\(2\)](#) from:

(A) exposing the rule to diverse public comment under [IC 13-14-9-3](#) or [IC 13-14-9-4](#);

(B) affording interested or affected parties the opportunity to be heard under [IC 13-14-9-3](#) or [IC 13-14-9-4](#); and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under [IC 13-14-9-3](#) and [IC 13-14-9-4](#).

BACKGROUND

"References to the Code of Federal Regulations" at [326 IAC 1-1-3](#) indicates the yearly edition of the CFR that is applicable to federal regulations that have been incorporated by reference throughout [326 IAC](#), unless a previous edition is specified in the rule. The latest version of the CFR contained in [326 IAC 1-1-3](#) is July 1, 2015. Since that date, several new federal regulations have been promulgated that are not reflected in the current version of [326 IAC](#). By updating the reference date to July 1, 2018, [326 IAC](#) will be consistent with those regulations that the federal government promulgated between July 1, 2015, and June 30, 2018.

This rulemaking will incorporate citations by reference from Titles 29 and 40 of the CFR into [326 IAC](#). Title 29 of the CFR contains federal regulations for the asbestos program. Title 29 is referenced in [326 IAC 14](#) (Emission Standards for Hazardous Air Pollutants) and [326 IAC 18](#) (Asbestos Management). These regulations are either directly incorporated by reference into [326 IAC](#) as state-enforceable rule provisions or as federal authority for the implementation and enforcement of state rule provisions. Title 40 of the CFR includes all federal environmental regulations promulgated by the United States Environmental Protection Agency (U.S. EPA). Title 40 is referenced

throughout [326 IAC](#). Some of the regulations and changes that have occurred since the last update to [326 IAC 1-1-3](#). References to the CFR, include:

80 FR 38628, July 7, 2015- Performance Specification 18- Performance Specifications and Test Procedures for Hydrogen Chloride (HCl) Continuous Emission Monitoring Systems (CEMS) at Stationary Sources: This rule finalizes performance specifications and test procedures for HCl CEMS to provide sources and regulatory agencies with criteria and test procedures for evaluating the acceptability of HCl CEMS.

80 FR 48262, August 12, 2015- Oil and Natural Gas Sector: Definitions of Low Pressure Gas Well and Storage Vessel: This rule finalizes amendments to the New Source Performance Standards (NSPS) for the oil and natural gas sector, including such changes as finalizing the definition of "low pressure gas well" and amendments to the NSPS concerning storage vessel provisions.

80 FR 64510, October 23, 2015- Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units: This rule finalizes the NSPS at 40 CFR 60, Subpart TTTT under the Clean Air Act section 110(b) that will establish standards for emissions of carbon dioxide for newly constructed, modified, and reconstructed affected fossil fuel-fired electric utility generating units. IDEM is not proposing to adopt this federal rule unless the federal revisions proposed by U.S. EPA on December 20, 2018 (83 FR 65424), are finalized and published in the Federal Register prior to the adoption of this rulemaking. If these changes are finalized before the adoption of this rule, then both the federal rule published on October 23, 2015, and the amendments will be incorporated into the state rule.

80 FR 65470, October 26, 2015- National Emission Standards for Hazardous Air Pollutants (NESHAP) for Brick and Structural Clay Products Manufacturing, and NESHAP for Clay Ceramics Manufacturing: This rule finalizes brick and structural clay products manufacturing and clay ceramics manufacturing.

80 FR 72790, November 20, 2015- Notice of Final Action on Reconsideration- NESHAP for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters: This rule provides U.S. EPA's final decision on the issues for which it granted reconsideration that pertain to certain aspects of the January 31, 2013, final amendments to the NESHAP.

81 FR 35824, June 3, 2016- Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: This rule finalizes amendments to the current NSPS and establishes new standards. The amendments to current standards improve implementation of the current NSPS, and the new standards for oil and natural gas source categories set standards for both greenhouse gases and volatile organic compounds.

81 FR 38085, June 13, 2016- NESHAP for Secondary Aluminum Production: This rule amends the NESHAP for secondary aluminum production to correct inadvertent errors, clarify rule requirements for initial performance tests and submittal of malfunction reports, provide an additional option for new round top furnaces to account for unmeasured emissions during compliance testing, and clarify what constitutes a change in furnace operating mode.

81 FR 44212, July 7, 2016- Standards of Performance for Stationary Compression Ignition Internal Combustion Engines: This rule finalizes amendments to the standards of performance for stationary compression ignition (CI) internal combustion engines to allow manufacturers to design the engines so that operators can temporarily override performance inducements related to the emission control system for stationary CI internal combustion engines. The amendments apply to engines operating during emergency situations and require compliance with Tier 1 emission standards during such emergencies.

81 FR 45232, July 13, 2016- NESHAP: Petroleum Refinery Sector Amendments: This rule amends the NESHAP for petroleum refineries concerning compliance dates for regulatory requirements that apply during periods of startup, shutdown, maintenance, and inspection for certain units, and finalizes technical corrections and clarifications to the NESHAP and NSPS for petroleum refineries.

82 FR 5182, January 17, 2017- Revisions to the Guideline on Air Quality Models: Enhancements to the American Meteorological Society/EPA Regulatory Model (AERMOD) Dispersion Modeling System and Incorporation of Approaches to Address Ozone and Fine Particulate Matter: This rule revises Appendix W to Part 51 for the guidelines on air quality models to include enhancements to the formulation and application of U.S. EPA's preferred near-field dispersion modeling system, AERMOD, and the incorporation of a tiered demonstration approach to address the secondary chemical formation of ozone and fine particulate matter associated with precursor emissions from single sources.

82 FR 28562, June 23, 2017- NESHAP from Portland Cement Manufacturing Industry (PC MACT): Alternative Monitoring Method: This rule amends the NESHAP from PC MACT to provide a compliance alternative for sources using HCl CEMS, as HCl calibration gases used for CEMS quality assurance are currently unavailable.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This draft rule imposes no restrictions or requirements because it is a direct adoption of federal requirements that are applicable to Indiana and contains no amendments that have a substantive effect on the scope or application of the federal rule.

Potential Fiscal Impact

Updating the reference to the CFR to mean the July 1, 2018, edition in [326 IAC 1-1-3](#) provides consistency between federal and state rules and does not establish any requirements to which the regulated sources are not already subject. There are no increased costs to the regulated entities due to this rulemaking. The proposed amendments to [326 IAC 1-1-3](#) will have no fiscal impact because the amendments are an incorporation of existing federal law and no impact beyond that already imposed by the federal law is imposed by this rulemaking.

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Keelyn Walsh, Rules Development Branch, Office of Legal Counsel at (317) 232-8229 or (800) 451-6027 (in Indiana).

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on CTAP and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Angela Taylor
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison
IGCN 1316
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 233-0572 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Katelyn Colclazier
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 431-1560
kcolclazier@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Erin Moorhous
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison
IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8921 or (800) 451-6027
emoorhous@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared findings regarding this rulemaking updating references to the July 1, 2018, edition of the CFR as required by federal rule. These findings are prepared under [IC 13-14-9-8](#) and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana is required by federal law to adopt these requirements as established by the U.S. EPA.
- (3) The environment and persons regulated or otherwise affected by the draft rule will benefit from prompt adoption of this rule, because it alleviates unnecessary duplication of rulemaking efforts by the state by directly updating the references to the CFR that have been amended by the U.S. EPA.
- (4) I have determined that, under the specific circumstances pertaining to this rule, there would be no reasonably anticipated benefit to the environment or to persons regulated or otherwise affected by the draft rule from the first or second written comment period under [IC 13-14-9-3](#) or [IC 13-14-9-4](#), or from the first public hearing under [IC 13-14-9-5\(a\)\(1\)](#).
- (5) The draft rule is hereby incorporated into these findings.

Bruno L. Pigott
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #19-382 References to the CFR
Keelyn Walsh
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of your faxed comments by calling the Rules Development Branch at (317) 232-8922.

- (3) By electronic mail to kwalsh@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than September 6, 2019. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Keelyn Walsh, Rules Development Branch, Office of Legal Counsel, (317) 232-8229 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 1-1-3](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-1-3](#) References to the Code of Federal Regulations

Authority: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 4-22-9-5](#); [IC 13-15](#); [IC 13-17](#)

Sec. 3. Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR) shall mean the July 1, ~~2015~~, **2018**, edition.

(Air Pollution Control Division; [326 IAC 1-1-3](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2369; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1102; filed Dec 14, 1989, 9:35 a.m.: 13 IR 868; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed May 25, 1994, 11:00 a.m.: 17 IR 2237; filed Jul 25, 1995, 5:00 p.m.: 18 IR 3381; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3298; filed Oct 30, 2000, 2:13 p.m.: 24 IR 667; filed May 21, 2002, 10:20 a.m.: 25 IR 3054; filed Aug 26, 2004, 11:30 a.m.: 28 IR 17; filed Oct 14, 2005, 10:00 a.m.: 29 IR 795; filed Mar 17, 2006, 1:00 p.m.: 29 IR 2517; filed Apr 26, 2007, 9:38 a.m.: [20070523-IR-326060412FRA](#); filed Apr 1, 2008, 9:59 a.m.: [20080430-IR-326070373FRA](#); filed Jul 1, 2009, 3:12 p.m.: [20090729-IR-326080901FRA](#); filed Oct 1, 2010, 3:49 p.m.: [20101027-IR-326100112FRA](#); filed Mar 28, 2012, 12:51 p.m.: [20120425-IR-326110472FRA](#); filed Aug 1, 2014, 10:53 a.m.: [20140827-IR-326130501FRA](#); filed Nov 7, 2016, 3:35 p.m.: [20161207-IR-326160208FRA](#))

SECTION 2. [326 IAC 12-1-1](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 12-1-1](#) Applicability

Authority: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#); [IC 13-17-3-12](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 1. (a) This article applies to the owner or operator of any stationary source for which a standard is prescribed under this article.

(b) ~~The air pollution control board incorporates by reference provisions of 40 CFR 60*, except 40 CFR 60, Subpart TTTT (80 FR 64510, October 23, 2015) are incorporated by reference.~~

(c) If the emission limitations contained in this article conflict with or are inconsistent with any other emission limitations established by this title, then the more stringent limitation shall apply.

*These documents are incorporated by reference. Copies may be obtained from the Government ~~Printing~~ **Publishing** Office, ~~732 North Capitol Street NW, Washington, D.C. 20401~~ www.gpo.gov, or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, **Legal Counsel**, Indiana Government Center North, ~~Tenth Floor~~, 100 North Senate Avenue, **Thirteenth Floor**, Indianapolis, Indiana 46204.

(Air Pollution Control Division; [326 IAC 12-1-1](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2554; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2372; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1603; filed Apr 26, 2007, 9:38 a.m.: [20070523-IR-326060412FRA](#))

[Notice of Public Hearing](#)

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